

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Arthur O. Phaneuf, et al

v.

Civil No. 12-cv-160-SM

NH Board of Registration of
Funeral Directors and
Embalmers

NOTICE OF RULING / ORDER

Re: Document No. 13, Motion to Dismiss

Ruling: Abstention under Younger v. Harris, 401 U.S. 37 (1971) is appropriate. Plaintiffs concede that the first two prongs of the Younger test are met. As to the third prong, plaintiffs have not provided "unambiguous authority" to rebut the presumption "that state procedures will afford an adequate remedy." Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 15 (1987).


In addition, this case does not fall under any exception to Younger. Although plaintiffs allege general bias on the part of the state administrative board, they do not plausibly allege bias on the part of the New Hampshire Superior Court, which may intervene to enjoin biased administrative proceedings. See Thompson v. New Hampshire Bd. of Medicine, 143 N.H. 107, 110 (1998). There are,

therefore, no "extraordinary circumstances" that would override mandatory abstention under Younger. See Esso Standard Oil Co. v. Cotto, 389 F.3d 212, 222 (1st Cir. 2004) (bias exception to Younger abstention was not triggered where state court interlocutory review of biased administrative proceeding was available).

Because plaintiffs seek only declaratory and injunctive relief, the case is dismissed. See Rossi v. Gemma, 489 F.3d 26, 37 (1st Cir. 2007) (dismissal, not stay, is warranted where no money damages are sought). The Clerk shall close the case.

So ordered.

August 14, 2012



Steven J. McAuliffe
United States District Court

cc: Frank B. Mesmer, Jr., Esq.
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James Spencer Culp, Esq.